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March 26, 1979

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ARIZONA ATTORNEY GENERAL

Hon. John C. Pritzlaff, Jr.
State Senator
Arizona State Senate
State Capitol, Senate Wing
Phoenix, Arizona 85007

Re: I79-086 (R79-017)

Dear Senator Pritzlaff:

In your letter of January 18, 1979, you inquired whether a transfer of real estate at a nominal consideration for estate planning purposes, specifically the creation of a trust, would fall within one of the exemptions from the affidavit of value and transfer fee requirements established by A.R.S. § 42-1612. Such a transfer would not be exempt unless the parties to the transaction independently qualified for one of the thirteen exemptions created by A.R.S. § 42-1614, as, for example, when the trustor and trustee are parent and child. See A.R.S. § 42-1614.B.3.

The plain and unambiguous language of a statute governs its interpretation and application. Arizona State Board of Accountancy v. Keebler, 115 Ariz. 239, 564 P.2d 928 (App. 1977); City of Mesa v. Killingsworth, 96 Ariz. 290, 394 P.2d 410 (1964). The statute establishing the affidavit of value and fee requirements is mandatory. A.R.S. § 42-1612.A provides in part as follows:

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Each deed evidencing a transfer of title and the contract relating to the sale of real property shall at the time of recording have appended thereto an affidavit of the seller and the purchaser to the transaction

(Emphasis added)

The County Recorder must refuse to record a deed evidencing a transfer of title or a contract of sale of real estate after December 31, 1978 without the affidavit and fee unless one of the exemptions contained in A.R.S. § 42-1614 applies. A.R.S. 42-1612.C.

A close examination of the exemptions fails to disclose any exemption for a transfer of title upon creation of a trust. The plain language of the statute must govern. Exceptions to a statute cannot be enlarged or added to by implication, no matter how desirable such expansion might seem. Wray v. Superior Court In and For the County of Greenlee, 82 Ariz. 79, 308 P.2d 701 (1957). The exemption statute lists thirteen specific categories of transfers that are exempt from the affidavit and fee. All other real estate title transfers or sales contracts not specifically included within the list of exemptions must be deemed to be excluded from exemption. Inspiration Consolidated Copper Co. v. Industrial Commission, 118 Ariz. 10, 574 P.2d 478 (App. 1977); Morris v. Arizona Corporation Commission, 24 Ariz. App. 454, 539 P.2d 928 (1975). Any suggestion that the provisions of A.R.S. § 42-1614.B.3 and/or § 42-1614.B.9 could be construed broadly to include by implication such estate planning transfers as mentioned in your letter would violate the accepted rules of statutory construction.

Transfers of title for nominal consideration between husband and wife or between parent and child are exempt from the affidavit and fee. A.R.S. § 42-1614.B.3. In a trust arrangement, the transfer of title is from the trustor to the trustee, and not to the beneficiary. Therefore, unless the trustor and trustee are husband and wife or parent and child, this exemption would not apply.

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A.R.S. § 42-1614.B.9 provides an exemption for so-called "strawman" transfers. To qualify for exemption, the transfer of title must be "to and from an intermediary" for the creation of "a joint tenancy estate or some other form of ownership". Such transfers indeed may be for estate planning purposes, as when a husband and wife wish to change the form of ownership of jointly-held property from community to joint tenancy. However, as the statutory language clearly requires a transfer "to and from an intermediary", the transfer of title to a trustee under a trust arrangement does not fall within this exemption.

Under the current provisions of A.R.S. §§ 42-1612 and 42-1614, the transfer of title to a trustee for nominal consideration upon the creation of a trust for estate planning purposes is not independently qualified for an exemption from the affidavit of value and transfer fee requirements. Legislation would be required to effect such an exemption.

Sincerely,



BOB CORBIN
Attorney General

BC/mm